89-1970

Supreme Court, U.S.
FILED
JUN 15 1990
JOSEPH F. SPANIOL, JR.
CLERK

Case No.

IN THE SUPREME COURT OF

THE UNITED STATES

Term October 1989

LISA ANTOCI, Respondent,

v.

GLENN W. CARTER, Petitioner.

PETITION FOR WRIT OF CERTIORARI TO THE

SUPREME COURT OF THE STATE OF CALIFORNIA

Glenn W. Carter
66846 Edinger Ave.
Huntington Beach, CA 92647
(714) 848 2020
Petitioner in Pro Per

QUESTIONS PRESENTED FOR REVIEW

1 A State Court, California Court of Appeals 4th District, with discretionary review denied by the California Supreme Court on May 2, 1990 has decided an important question of federal law which has not been but should be settled by this Court, and has decided a federal question in a way that conflicts with decisions of this Court. Can such decisions stand in violation of this Court's rulings and of the United States Constitution?

2 Whether an alleged father can be denied the right to present evidence of his earnings where an award of child support and attorney fees is made against him, where under state law, no judgment of paternity had been entered at the time of the questioned orders and a stipulation was incomplete and violated state law, since it mandatorily required a judgment of paternity being entered; and the court made an award three times above

the State Agnos statute required amount, and violated federal guidelines which the State of California was supposed to follow since it was receiving funds from the federal government.

3 Whether federal guidelines established in 42 USC § 667, et sec., including amendments can be ignored by the California Supreme Court and State appellate court, both making no findings required to establish support ordered; and whether the support order does not follow a state-wide standard required by federal law to be established and uniformly used all over California.

4 Whether the opinion allows the California Courts to ignore the federal guidelines and mandated State standard Agnos law and does not follow any state or federal guideline and is a capricious, unsupported taking of property without due process of law, taking of property

without just compensation and not affording Petitioner equal protection of the law, and a right to a hearing.

5 Whether California opinions can ignore requirements for standardized California standards which thereby comply with the federal guidelines, can allow State court judges to set support for children at any amount not standardized, without findings, including requiring poor parties to pay an amount for support that a millionaire would normally pay.

6 Whether the California approach to child support is so far out of control that only a decision by this Court can standardize California law with other states which follow the federal guidelines.

7 Whether a state appellate Court can violate the constitutional rights of a state citizen and at the same time ignore a controlling opinions of this court, while ignoring California law requiring reasons for support

orders and judicial notice requirements, and mandatory presumption of California Evidence Code § 621 where judicial notice facts of Hawaii divorce of Respondent showed conception of child in question during prior marriage cohabitation with a Mr. Gates.

TABLE OF CONTENTS

TABLE OF AUTHORITIES vi

OPINIONS BELOW 2

JURISDICTION 5

CONSTITUTIONAL AND STATUTORY

PROVISIONS INVOLVED 6

STATEMENT OF THE CASE 9

REASONS FOR GRANTING THE PETITION .. 13

APPENDIX A Calif. Supreme Court Opinion .. A-1

APPENDIX B Court of Appeal deny rehearing . B-1

APPENDIX C Court of Appeal opinion C-1

APPENDIX D Trial Court Judgment D-1

APPENDIX E REQUEST FOR JUDICIAL ... E-1
NOTICE OF NEWSPAPER ARTICLE RE
TOUCHSTONE CASE AND
CALIFORNIA FAILURE TO
FOLLOW 42 USC § 667.

TABLE OF AUTHORITIES

Cases:

Dodd v Henkel 1978 84 CalApp3d 620 20

U.S. v Gonzalez C.A.N.Y. 1971,
442 F2d 698 certiorari denied
92 S Ct 146, 402 US 845, 30 Led2d 81 19

Kossick v United Fruit Co.
N.Y.1961 81 S Ctr 886, 365 US 731,
6 L Ed2d 56 rehearing denied
81 S. Ct 1657, 366 US 941, 6 L Ed2d 852: 21

U.S. v Munoz
N.Y. 1963 83 S Ct 1850,
374 US 150 L. Ed2d 805: 22

U.S. v O'Malley
Ill 1966 86 S Ct 1123,
383 US 627, 16 Led2d 145. 21

Saunders v Shaw (1917) 244 U.S. 317 15

In re the Marriage of Touchstone
2/23/90 Court of Appeals
Fourth Dist, Div. One,
218 Cal App3d 870,
(90DJ DAR 2761) 14, 16, 17, 22

Statutes and regulations:

42 USC § 667 State Guidelines for
child support awards
(a) Establishment of guidelines method,
(b) as amended adding rebuttable
presumption and requirement for
findings (c) 4, 6, 11, 21

The Fourteenth amendment of the
U.S. Constitution: Sec 1 Due
process of law. . nor shall any
state deprive any person of life,
liberty or property without due process
of law 7, 10, 11, 12, 13, 14, 15, 16, 19, 20

U.S. Constitution 5th Amendment 9, 14, 15, 16

Federal Rules of Evidence Rule 201
Judicial notice 7

California Rules of Evidence
§§ 451, 452 Judicial Notice 7
§ 621 Mandatory presumption of Paternity . . . 20
Cal Ev. Cd § 890 20

California Civil Code § 4721(a),
the Agnos Act 11, 13, 14, 16, 17, 18, 22

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1989

LISA ANTOCI, Respondent,

v.

GLENN W. CARTER, Petitioner.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

8 GLENN W. CARTER, Petitioner in Pro Se on behalf of himself hereby petitions for a writ of certiorari to review judgments of the California Supreme Court, May 2, 1990 denying a hearing to overrule the opinion of the California Court of Appeal 4th District which denied a petition for rehearing in Case No. G007322, (Orange County trial Ct No AD31720), March 13, 1990.

OPINIONS BELOW

(A) Appendix D, Trial Court, Oct 12, 1988, COMMISSIONER OF THE SUPERIOR COURT FRANK F. FASEL. #AD31720 Unconstitutionally deprived Petitioner of a right to put on evidence of his ability to pay child support;

(B) Appendix C IN THE COURT OF APPEAL STATE OF CALIF FOURTH APPELLATE DISTRICT DIV 3 FILED 2/15/90 G007322, affirmed the trial court, with an opinion that included false statements as to what the record consisted of, and itself violated the Due Process rights of Petitioner; Court claimed that Carter stipulated not to have his income and expenses considered because he was afraid of discovery, outrageous on its face since under Federal and State Constitutional law a paternity defendant does not have to give discovery until a judgment of paternity is entered. None was entered in

Carter's case until November 1988, after the void support and attorney fee order was filed.

(C) Appendix B COURT OF APPEAL STATE OF CALIFORNIA FOURTH APPELLATE DIST. DIV. 3 FILED 3/13/90 G007322, ORANGE COUNTY NO. AD 31720 The petition for rehearing is DENIED. The rehearing petition showed point by point where constitutional issues had been properly raised but totally ignored.

(D) Appendix A ORDER DENYING REVIEW AFTER JUDGMENT IN THE SUPREME COURT OF CALIFORNIA #S014708 IN BANK LISA ANTOCI, Respondent SUPREME CT FILED May 2, 1990 v GLENN W. CARTER, Appellant Appellant's petition for review is denied. LUCAS CHIEF JUSTICE. Notwithstanding Court of Appeal in the Touchstone opinion In re Marriage of Touchstone (1990), 218 Cal

App3d 870, supports the failure of a state judge to follow the Federal Guideline or the California Agnos support standards act and affirmed a support amount below Agnos, they violated Petitioner Carter's due process rights and Federal Guidelines required in 42 USC § 667 et sec, by refusing Carter a right to show his financial condition at trial, and set his support payments at three time higher than Agnos act mandates.

These opinions show that California is out of control and has no standard and violates the Constitutional rights of citizens. Here we have two rulings of California's highest state court in conflict and both violating Federal guide lines and the constitutional rights of Petitioner.

JURISDICTION

Jurisdiction of this Court is invoked under Rules of the Supreme Court Rule 10(c); 28 U.S.C. § 2101(c). Order denying review by the California Supreme Court was filed May 2, 1990, Case No. S014708, See Appendix A, supporting the opinion of the Fourth Appellate Dist Div Three No. G007322 petition for rehearing denied March 13, 1990. See Appendix B.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

FEDERAL REGULATION

42 USC § 667 State Guidelines for child support awards(a) Establishment of guidelines method, . .and shall be released at least once every 4 years to ensure that their application results in the determination of appropriate child support award amounts. .(b) Availability of guidelines, binding nature. October 1988 amendment struck "but need not be binding. . and (c) by adding at the end the following new paragraph: (2) There shall be a rebuttable presumption, in any judicial or administrative proceeding for the award of child support that the amount of the award which would result from the application of such guidelines is the correct amount of child support to be awarded. A written finding or specific finding on the record that the application of the

guidelines would be unjust or inappropriate in a particular case as determined under criteria established by the State, shall be sufficient to rebut the presumption in that case.

Effective date of sub section a Oct. 1, 1987; Amend effective One year after October 13 1988; (therefore the California Supreme Ct ignored the presumption which was effective at the time they refused review and supported denial of rehearing of Court of appeal of 3/13/90.)

The Fourteenth Amendment to the United States Constitution provides in relevant part:

> Section 1. Due Process of law. . . nor shall any state deprive any person of life, liberty, or property, without due process of law; . .

Federal Rules of Evidence Rule 201 Judicial notice.

California Rules of Evidence §§ 451, 452 Judicial Notice;

§ 621 Mandatory presumption of Paternity:

child conceived by married father during cohabitation.

Cal Ev. Cd § 890 does not allow tests which do not rule out paternity to be used as evidence.

California Civil Code § 4721(a), the Agnos Act.

STATEMENT OF THE CASE

The appellant alleged father of child was sued in paternity by Lisa Antoci the mother. At the time of conception she was married to another man. Appellant Carter was not given his Constitutional right to remain silent as to his finances during discovery, before a judgment of paternity was entered. He was tricked into signing an incomplete stipulation which had to be made into a judgment before he could be forced to supply discovery information. He filed as the record shows numerous income and expense declarations in the court file. But the trial Commissioner Fasel, refused to consider his income and expense statements, claiming he had stipulated away his constitutional rights to produce evidence and have a fair hearing. As a matter of record and fact, the trial court did not enter a judgment of paternity until November 1988, over a month after it

ordered the support and attorney fee orders done in October. The opinion of the Court of appeal Appendix-C falsely claims Carter had no right, constitutional right, or other right to have his true earnings and expenses considered when a support order was made against him. The court of appeal in its opinion uses an alleged blood test to support its opinion, claiming that the test proved Carter was the father, and ignored the California presumption of paternity which actually controls the case. But the Court of Appeals wrongly reads the blood test law since evidence of the test can be used against a potential father only to show he was not the father. It cannot be used to support a finding that he is the father. The court of appeal also deprived Carter of a fair hearing on appeal since it refused to consider under the doctrine of judicial notice the actual divorce proceedings wherein a declaration of the true father showed that

conception took place while he was cohabiting with Antoci the mother. At every turn the California Courts refused to consider any evidence which proved Carter was not the father and not obligated to pay support. In fact deprived him of any ability to put the truth into the court record, and deprived him of all his constitutional rights, of a fair hearing, of ability to produce evidence of earnings to justify a support or attorney fee order, deprived him of the right to have his income and expense circumstances made a part of the record supporting the support and attorney fee order and deprived him thereby of his rights under the California Agnos support standards act, and deprived him of his rights under Federal law 42 USC § 667 to have standardized support orders with reasons given for the particular order of support and of attorney fees. This deprived Carter of his right to have his support order and attorney fee order comply with

Nation wide standards mandated by the United States Constitution and Federal statutes and their guidelines, and deprived Carter of his right not to be ordered to pay any sums a judge decides on by subjective capriciousness, with no justification in the record.

REASONS FOR GRANTING THE PETITION

9 The Agnos act states that in determining ability of parents to pay the mandatory minimum child support, the court shall consider to the extent consistent with the best interests of the child or children, the earning capacity of either or both parents Civil Code § 4721(a)

But in the Carter case, Agnos was not considered. He was left with no evidence of his earnings at the trial. The support order was in violation of his Constitutional right to a hearing and prevented his having a chance to have a meaningful hearing and to put on evidence of his ability to pay support. The false claim by the trial court, supported by the Appellate Court and the California Supreme Court, that Carter gave up his rights by stipulating he could pay any reasonable amount is false.

10 The alleged stipulation was never converted to a judgment as required by law before the support and

attorney fee orders appealed from, and did not include on it the Agnos statements required to have a valid stipulation. The latter had been crossed out. The argument of the Appellate Court that Carter made the stipulation in order to get out of having to give discovery is false also, since he had a Constitutional 5th Amendment right not to give any testimony pending a judgment being entered proving his paternity as father of the child. That was never done by the court until November 1988, after the orders appealed from were made.

11 His constitutional rights were never given him by California. California by having a triple standard as to support, in re Marriage of Touchstone 2/23/90, 218 Cal App3d 870, the California Court of Appeal First District San Diego # D008398 allowing support to be awarded below the California Agnos state standard, and in Carter

to be entered at three times the amount shown to be correct for a person earning what Carter does, shows that California is out of Control and in violation of 42 USC § 667, Federal guidelines required of any state of the United States and the Federal Constitution which requires equal protection due process applicable to the States through the 14th Amendment to the U.S. Constitution.

12 By accepting this case for hearing this Court can establish the law for the entire Country making it clear that State Standards for support have to comply with Federal law.

The Supreme Court held in Saunders v Shaw (1917) 37 S. Ct. 638, 244 U.S. 317, 61 L.Ed 1163; State procedural rulings cannot be found to be independent of a claim that the procedural rulings themselves cause a denial of due process. The issue was raised at trial and in the appeals court and the petition to the California Supreme

Court. Petitioner was prevented from showing his true earnings at all hearings supporting and enforcing the unconstitutional Attorney fee award of $15,000 plus and the child support award of over $1000 per month three times what the State laws the Agnos child support awards statute required. Also such orders violated state law which requires findings be made when an attorney fee award or support order are made.

13 California does not follow a standard law for setting support statewide. In fact allows judges to arbitrarily set any amount of support they decide subjectively should be paid by a father such as Carter.

13.1 In re the Marriage of Touchstone, (Touchstone v Touchstone, 1990, 218 Cal App3d 870, Modification 90 DJ DAR 3318 3/12/90, Cal Court of Appeal 4th Dist Case No. D008398 (Super Ct. No. Di42739) it was allowed that a judge could set support below the

California Agnos Act standard. See page 4 of opinion as modified and filed February 23, 1990:

> The Court's decision however, was completely unrelated to guideline calculations, and was based upon "reasons" unrelated to the guidelines.

This shows that California does not enforce a standard required by Federal Guidelines.

13.2 The Carter unpublished opinion allowed an amount of support to be set which bore no reasonable or rational relationship to the ability of Carter to pay, in fact was based on the legal argument that in certain cases where millionaires have stipulated they can pay any reasonable amount, why since CArter stipulated his income should not be considered and he must pay 3 times the Agnos Standard in monthly support payments. Both Touchstone and Carter, do not follow State established standard. In Carter the Supreme Court refused to hear it, letting the Court of appeal judgment setting support at three times the California Agnos standard, and in violation of Federal

guidelines and Agnos requirements for considering the income and expense of the supporting parent, and not including required reasons for such action. In re Marriage of Touchstone, 1990, 218 Cal App3d 870, an amount of support below the Agnos Standard to stand was ordered by the Court of Appeal without following required federal guidelines.

14 These two cases prove why this Court now should grant the petition for a hearing to require California to follow the Agnos standard and follow the Federal Guide lines.

15 Carter requested before opening briefs were required to have appellate court take judicial notice of divorce proceedings of Antoci which showed conception during cohabitation of child in question, and again during appeal when a declaration of marriage father surfaced from Hawaii court records, confirming conception was during

cohabitation during marriage with Antoci. The Appeals Court misrepresented in footnote 1 in opinion claiming judicial notice not properly requested. Appendix C-2.

15.1 Judicial notice was mandated under California law and federal constitutional law. See U.S. v Gonzalez C.A.N.Y. 1971, 442 F2d 698 certiorari denied 92 S Ct 146, 402 US 845, 30 Led2d 81, holding:

> Where adequate information is available for taking of judicial notice an appellate court should use such information.

California Evidence Code § 451 Matters which must be judicially noticed, was ignored, and which may be noticed under § 452 violating constitutional rights of Carter thereby. Those matters of which judicial notice is required are:

> 451 (a) The decisional. . of this state and the United states and 452(d)(2) records of any court of record of the United States.

That included the Hawaii divorce records.

This set running mandatory presumption of parenthood under California law, California Evidence Code § 621,[1] which required Appellate court to find in favor of Carter, since he was not marriage father. The Appellate Court falsely referred to a blood test, Appendix C-3, proving Carter father of the child. Cal Ev. Cd § 890 does not allow tests which do not rule out paternity to be used as evidence. Only a test that rules out paternity can be used as evidence. Carter's test did not rule out paternity but was not properly considered on the issue. To refer to it in the appellate opinion, the appeals court had to violate state law and the Constitutional rights of Carter. Dodd v Henkel 1978 84 CalApp3d 620. .tests are admissable

---

[1]Notwithstanding any other provision of law, the issue of a wife cohabiting with her husband, who is not impotent or sterile is conclusively presumed to be a child of the marriage. (a) Except as provided in subdivision (b) the issue of a wife cohabiting with her husband, who is not impotent or sterile is conclusively presumed to be a child of the marriage. Cal Sup Ct rules this is a matter of substantive law Jackson v Jackson 1967 67 C2d 245, 430 P2d 289.

when used to exclude possible paternity at page 608 citing Jackson v Jackson. See footnote 1 above.

16 Certiorari must be granted.

See U.S. v O'Malley Ill 1966 86 S Ct 1123, 383 US 627, 16 Led2d 145.

> Because of conflicting decisions of courts of appeals as to whether portion of trust principal representing accumulated income was to be excluded from taxable estate, the Supreme Court granted certiorari.

Here we have conflicting opinions plus the important question of failure of California to properly enforce a Federal law 42 USC § 667 et sec.

Novelty of federal question. See Kossick v United Fruit Co. N.Y.1961 81 S Ctr 886, 365 US 731, 6 L Ed2d 56 rehearing denied 81 S. Ct 1657, 366 US 941, 6 L Ed2d 852:

> Certiorari was granted because case presented novel questions as to interplay of state and maritime law.

17 California is not enforcing 42 USC § 667 support orders for children are out of control.

17.1 Like Carter's three times the Agnos standard.

17.2 Like Touchstone supra, less than the mandatory Agnos minimum and no reasons for them stated.

See U.S. v Munoz N.Y. 1963 83 S Ct 1850, 374 US 150 L. Ed2d 805:

> Certiorari would be granted when decision below involved important question in construction of federal statute and when two courts of appeals had previously reached a contrary result.

For these reasons the Petition for writ of certiorari must be granted.

Dated: June 11, 1990 _____

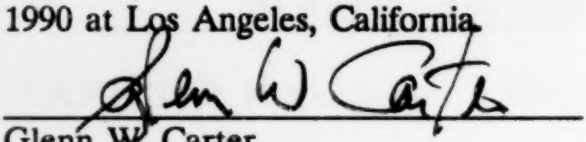
GLENN W. CARTER PETITIONER
APPELLANT IN PRO PER

Verification next page

Verification

State of California]
ss
County of Los Angeles]

I say under penalty of perjury the foregoing facts in the within petition are true and this was signed on June 1990 at Los Angeles, California.



Glenn W. Carter

APPENDIX A

ORDER DENYING REVIEW AFTER JUDGMENT

BY THE COURT OF APPEAL

Fourth App Dist Div 3 No. G007322

IN THE SUPREME COURT OF CALIFORNIA

IN BANK #S014708

LISA ANTOCI, Respondent

SUPREME CT FILED

May 2, 1990

Robert Wandruff Clerk

v

GLENN W. CARTER, Appellant

Appellant's petition for review is denied.

LUCAS CHIEF JUSTICE

APPENDIX B

COURT OF APPEAL STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT DIV. 3

FILED 3/13/90

ANTOCI, LISA

V.

CARTER, GLENN W.

G007322, ORANGE COUNTY NO. AD 31720

THE COURT:

The petition for rehearing is DENIED.

Wallin J. Justice

We concur:
Scoville, P.J.
Presiding Justice

H. Moore, J.
Justice

cc: Orange County clerk
All counsel

APPENDIX C

IN THE COURT OF APPEAL

STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT DIV 3

FILED 2/15/90

LISA ANTOCI,
Plaintiff and Respondent,
v

G007322
(Sup.Ct. #AD31720)
OPINION

GLENN W. CARTER,
Defendant and Appellant.

Appeal from a judgment of the Superior Court of Orange County, Philip E. Cox Judge and Frank F. Fasel Temporary Judge (pursuant to Cal Const. Art VI § 21). Affirmed. Glenn W. Carter in pro per defendant/appellant; Philip G. Seastrom and Michael Fisher for Plaintiff and Respondent.

Glenn Carter appeals from a judgment finding him to be the father of Christina Marie Antoci and ordering him to pay child support, attorney fees and costs. He contends his stipulation of ability to pay reasonable amounts was

obtained by fraud, the trial court erred in refusing to consider his income and expense declaration in determining the amounts, the trial court abused its discretion in setting the amounts, and the trial court improperly used the language "until further order of court" in the judgment ordering support. [1] We disagree and affirm. Carter stipulated in February 1988 he had the ability to pay "whatever amount of child support the court deems reasonable and necessary for the benefit of Christina" and "whatever amount for attorney fees and costs, if any, the court deems reasonable. " The

---

[1]In his reply brief Carter argues for the first time that Antoci's former husband is the legal father of Christina and that the proceedings were tainted because commissioner Vogl had"practiced law on common matters" with Antoci's attorney. Because we declined to take judicial notice of the alleged facts underlying these contentions (see Simmons v Southern Pac. Transportation Co. (1976) 62 CalApp3d 341, 367), we do not reach them. We note that if we had, the first contention would "apparently fail" due to the testimony of Antoci's prior husband which Carter proffered in his request that this court take judicial notice. The latter contention deals with issues arising after judgment: Commissioner Vogl never heard any contested matter. Turner alluded to in the motion for Judicial notice, is not relevant because Judge Turner did not hear the case prior to judgment.

stipulation was apparently in response to Antoci's motion to compel Carter's deposition and production of financial records and for sanctions, arising from Antoci's unsuccessful attempt to obtain evidence of Carter's ability to pay. Upon entry of the stipulation, the discovery motion was taken off calendar. In May 1988 the parties stipulated Carter was Christian's father, an allegation Carter had denied since the start of the litigation, despite an HLA blood test proving paternity and Carter's continued attempts to gain custody of Christina. The parties also stipulated to joint legal custody, Antoci to have physical custody and Carter to have visitation rights. The issues of child support, attorney's fees and costs, joint physical custody, and Carter's motion to change Christina's last name to Carter were reserved. At trial on the reserved issues the court awarded child support of $1,074 per month, attorney 's fees and costs of $14, 552,

declined to award joint physical custody and denied the motion for name change. In deciding the child support issue, the court refused to consider Carter's income and expense declaration. I Carter argues his stipulation of ability to pay any reasonable child support and attorney's fees and costs was obtained by fraud in that Antoci's attorney never told him Antoci would be seeking as large an amount as she ultimately did. The contention is meritless for numerous reasons. First the claim was never urged in the trial court.

[citations]. .nothing in the record [citations]. .courts have . .permitted rescission of stipulations. .upon fraud [citations] there is no evidence Antoci's attorney. .misrepresented a material fact[citations] or concealed such a fact [citations]. The parties entered into the stipulation with knowledge the legal effect was to allow the court to determine the appropriate amount of

support, fees and costs without regard to Carter's ability to pay. [citations]. Carter stresses the fact his attorney was not "counsel of record" when the stipulation was made. The attorney had represented himself to be Carter's attorney and had submitted opposition to the motion to compel Carter's deposition and production of documents. Carter signed the stipulation directly below the attorney's signature, expressing his understanding of and agreement with the terms of the stipulation. If represented, he expressly ratified his counsel's action [citations][2]

By entering into the stipulation, Carter was able to accomplish his goal of avoiding a deposition and

---

[2]This case is distinguishable from Solberg v Wenker (1985) 163 Cal App3d 475, 478-479 where enforcement of a stipulation was held a due process violation. There the defendant was an alcoholic, stipulated to an $11,000 child support judgment without knowledge of waiver of his trial rights. Here even assuming Carter was technically in propria persona, he was a doctor of optometry had an attorney present to advise him and never claimed to misapprehend the nature and effect of his stipulation.

production of records which would provide Antoci with the ability to prove his financial condition. The stipulation was valid and binding. II The determination effectively resolves Carter's contention the trial court erred in refusing to admit his income and expense statement. It is well established that a stipulation by a party of ability to pay effectively removes that issue from controversy. [citations] There is no reason to consider Carter's financial condition.[3] III Carter asserts that the trial court abused its discretion in determining the amount of child support, attorney fees and costs. [4] In light of our resolution of Carter's previous contentions, it did not. An appellate court will overturn the trial court's

---

[3]Fuller v Fuller 1979 89 CalApp3d405. ..is inapposite since no stipulation of ability to pay was involved.

[4]Carter refers to language from Civil Code Sec 4700 requiring a showing of. .ability to pay. . .That subsection deals with misfeasance by a caretaker parent and is not applicable. Civil Code Sec 4351 is apposite here. To the extent ability to pay is implicit in that section, Carter has stipulated to that fact.

determination of these matters only in cases of clear abuse of discretion. This court will not substitute its own judgment and will affirm if there is any substantial evidence in support of the trial court's finding. [citations]. In determining child support, the trial court calculated the net income available to Antoci and the other family members of her household and required Carter to contribute the amount necessary to achieve parity between Christina and the others. To this, the court added the costs of child care to which Carter had previously agreed. The court found Antoci's expense approach to calculating the support was unfair to Carter, and reduced considerably the requested amount. This approach was reasonable and the evidence in support of it was substantial. The court awarded $14, 522 in attorney fees and costs, almost $9000 less than Antoci had incurred. Nearly $4000 of the total amount was

attributable to the cost of experts on the issue of custody. The Court found Carter had been dilatory and obstreperous as far as reaching a disposition of this matter. From a review of the record, we conclude this finding is supported by substantial evidence.[5] The trial court did not abuse its discretion[6] IV Carter contends the language in the support order until further order of court is improper, citing Lang v Superior Court 1984 153 Cal App3d 510. The argument not only lacks merit, it comes perilously close to a misrepresentation to this court. The passage of the order quoted by Carter continues, or until the child marries, dies, is emancipated, reaches 19, or reaches 18 and is not a full time high

---

[5]There is evidence in the record that Antoci was not the model of diligence. However it is the role of the trial court to evaluate and compare conduct of the parties. . . . .

[6]It is not clear whether Carter makes a due process claim in asserting an abuse of discretion beyond that already discussed. If he does he cites no authority and we find no merit.

school student residing with a parent, whichever occurs first. This language comports with the format suggested by Lang v Superior Court supra 153 CalApp3d 510 512 at footnote one. If there were any issue here it would be frivolous.

V In conclusion of his opening brief, Carter mentions for the first time that new orders must be made including joint physical custody according to the stipulated order set forth on 5/23/89[sic], ,[and] the child be given the sir name [sic] Carter, , ,Although we deplore thus utter disregard for the Rules of Court, we deal with these points in the interests of justice[citations] The trial court's award of physical custody to Antoci was pursuant to the stipulation of May 23, 1988[7] As with the ability to pay issue, Carter must abide by his own stipulation. The

---

[7]Carter's assertion in the quote above that joint physical custody was part of the May 23 stipulation reflects another misrepresentation to this court, resulting in more waste of judicial time.

decision to maintain the status quo on Christina Antoci's last name was based upon substantial evidence and was within the discretion of the trial court.[citations]

The judgment is affirmed.

/s/Wallin

Wallin J.

/s/ Scoville

Scoville, P.J.

/s/ Moore

Moore J.

APPENDIX D

filed Oct 12, 1988

SUPERIOR COURT OF THE

STATE OF CALIFORNIA

COUNTY OF ORANGE

LISA ANTOCI,	Case No. AD31720
Plaintiff,	JUDGMENT ON
v.	RESERVED ISSUES
GLENN W. CARTER,	
Defendant.	

The stipulation and order for judgment filed May 23, 1988 reserved jurisdiction over the issues of child support, attorneys and costs. Defendant's request that the minor child's name be changed from Antoci to Carter, and Defendant's request that his time with the child be designated as physical custody versus visitation. Trial on these reserved issues came on regularly for hearing on

August 31, 1988 in Department 46 of the above entitled Court, the Honorable Frank Fasel, Commissioner Presiding. Plaintiff being present and represented by Attorney Philip G. Seastrom and Defendant being present and represented by Attorney Jonathan M. Yost. These issues were tried by the Court having heard the evidence and having received the documentary evidence now rules as follows: Defendant's request that his time with the minor child be designated physical custody versus visitation is denied. Defendant is awarded the visitation as set forth in the stipulation and order for judgment filed May 23, 1988. The Court finds that the minor child Christina Marie Antoci, born January 21, 1983 has used the name Antoci for five years. The court finds that it would be detrimental to change the child's last name and the child's last name shall be Christina Marie Antoci. The court orders Glenn W. Carter to maintain medical

insurance as and for partial support in full force and effect for the benefit of the minor child. The court orders plaintiff Lisa Antoci to maintain medical insurance that is available to her through her place of employment in full force and effect for the benefit of the minor child.

As for additional child support each party shall pay one half of all uninsured medical, dental, hospital, optical and pharmaceutical expenses incurred on behalf of the minor child. The court finds that Plaintiff's monthly living expenses are beyond the income of Plaintiff and her current husband. The court finds Plaintiff's husband George Land has a gross monthly income of $3000 per month and a net monthly income of $2,375 per month and the Court finds plaintiff has a net monthly income of $1,970 per month. George Land's net monthly income of $2,375 which pays for the monthly expenses of three people, Mario Antoci, Plaintiff and George Land, in the

amount of $791 per month per person. Plaintiff provides$1,970 per month for four people, being Christina Marie Antoci, Mario Antoci, George Land and Plaintiff which is equal to $492 per month per person. Therefore the combined $791 per month per person from George Land and $492 per month per person from Plaintiff equals $1,243 per month in living expenses that are paid for Mario Antoci, George Land and Plaintiff. In contrast Plaintiff has only available the sum of $492 for Christina Marie Antoci. Therefore it is necessary that plaintiff receive an additional $791 per month for Christina Marie Antoci so that each of the four (4) people in the household will receive the same monthly amount towards their living expenses. Additionally there are child care expenses for Christina Marie Antoci in the amount of $283 per month and therefore plaintiff has a need for reasonable and necessary child support from defendant

for the minor child Christina Marie Antoci in the amount of $1,074 per month. Defendant executed a stipulation which was filed with the court on February 11, 1988 that provides: "Defendant Glenn W. Carter has the ability to pay:(1) Whatever amount of child support the court deems reasonable and necessary for the benefit of the minor child Christina Antoci born January 21, 1983; (2) Whatever amount for attorney fees and costs, if any, the court deems reasonable and necessary for the plaintiff and the minor child. Based upon the foregoing defendant shall pay to plaintiff as and for child support for the minor child Christina Marie Antoci the sum of $1,074 per month, payable one half on the first and one half on the fifteenth day of each and every month commencing with a payment due September 15, 1988 and continuing thereafter until further order of the court or until the child marries, dies is emancipated, reaches 19 or reaches

18 and is not a full time high school student residing with a parent whichever occurs first.

The parties acknowledge and comply with the conditions set forth in the Civil Code Section 4728(a) that: 1. The parties acknowledge that they are fully informed of their rights pursuant to this chapter and that the award is being agreed to without coercion or duress. 2. The parties declare that their child's needs will be adequately met. 3. The right to support has not been assigned to the county pursuant to section 11477 of the Welfare and Institutions Code and no public assistance application is pending. If defendant fails to pay any court ordered child support in an amount equal to one month's payment, an assignment of his wages will be obtained without further notice to defendant. The Court finds that defendant was obstreperous and was not diligent in reaching the judgment in these proceedings. The five (5)

years these proceedings took to conclude speak for themself [sic]. Defendant Glenn W. Carter is ordered to pay to attorney Philip G. Seastrom as and for attorneys fees and costs the sum of $14,552, forthwith.

Dated: IT IS SO ORDERED Oct 12, 1988

_____

COMMISSIONER OF THE SUPERIOR COURT
FRANK F. FASEL

The Los Angeles Daily Journal Tuesday May 8, 1990, page 1: Child Support Enforcement Endangered. State May Lose Federal Funding Over Compliance. . . California's multiple sets of discretionary guidelines do not conform to new federal requirements[1], which require that states establish one guideline and uniformly apply it throughout the state. . . Page 13 support cont. . . California has a two -tiered system of guidelines, The Agnos Child Support Standards Act of 1984, established minimum standards for support awards throughout the state. But countieshave adopted local guidelines. . .but the County guideline is only advisory. .Although judges are required to state their reasons on the record. . A recent case they see as an example of the problem of discretionary guidelines is In re The Marriage of

---

[1]42 USC § 667

Touchstone D008398.[1] . . .The case was the subject of an unusual amount of attention from the 4th District Court of Appeal in February 1990 the appellate Court first issued an opinion not certified for publication then published it a few weeks later without a request from either attorney.[3]

. . In the modified opinion the majority decided that the trial judge didn't have any evidence to conclude that awarding the county minimum would cause family strife. . . .the Touchstone opinion will be. . at worst a highly misleading precedent for trial court judges. . . . . other attorneys say they hope the Touchstone case will point up some of the inequities in the discretionary guidelines. . .

---

[1]218 Cal App3d 870

[3]The Carter opinion was refused publication although Carter requested publication. Of course this covers up the Constitutional Violation of his rights and no conformance with the guidelines and refusal to follow the federal statute requirement of 42 USC § 667.

We have ā real problem in this state when it comes to new spouses income, there are no details on how it is to be done. This is ridiculous, . . something that is this important and endemic statewide-it probably affects 75 percent of the population; yet we don't have any uniform procedure to tell us how to value that income.

Judicial Notice under Evidence Rule 201 is requested of this article.